

**FLOYD RAY BESS**  
Claimant

# CITY OF WICHITA

Docket No. 1,010,805

The facts are essentially undisputed. Claimant is a firefighter for the City of Wichita. On April 21, 2002, when claimant arrived at a house fire he was told to pull a five inch hose to the fire plug. As claimant grabbed the hose and began dragging it toward the fire plug

he began to experience chest pain. After connecting the hose to the fire plug, claimant entered the structure but because the chest pain worsened he exited the structure to take a break. Claimant then attempted to return to fighting the fire but his chest pain had become so severe that he was unable to pick up a fire ax. Claimant told the safety officer that he had chest pain and an ambulance was called to take claimant to the hospital.

Because of the claimant's chest pain symptoms, a cardiac evaluation was performed. The diagnostic testing did not reveal any cardiac problems. After claimant was released from the emergency room, he was referred to Dr. Siwek and also received ongoing treatment with Dr. David W. Niederee.

In a letter dated August 7, 2002, Dr. Niederee noted in part:

The patient developed an episode of severe chest pain which he felt was probably related to his heart, but was diagnosed as esophageal spasms.<sup>1</sup>

In a medical record dated April 29, 2003, Dr. Niederee commented:

Floyd comes in to discuss his back pain. I showed pictures today of what I really think is causing Floyd's pain which is the combination of both some esophageal spasm and also **some inflamed muscles on the inside of the chest wall which he probably tore while dragging that fire hose around when the pain first started.** He has had every test possible to make sure that his heart is okay.<sup>2</sup> (Emphasis added.)

The medical record contained the doctor's opinion that claimant's chronic chest pain was probably work related.

Whether claimant suffered a work-related injury is an issue set forth in K.S.A. 44-534a(a)(2) (Furse 2000) that grants the Board authority to review a preliminary hearing order. It is mandatory under K.S.A. 44-555c(a) (Furse 2000) that the review of the Board be "upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."

The uncontroverted medical evidence provided at the preliminary hearing indicates that as a result of dragging the fire hose at work claimant suffered torn chest wall muscles. Based on the record presented, the Board finds for purposes of preliminary hearing that claimant suffered accidental injury arising out of and in the course of his employment on

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<sup>1</sup> P.H. Trans., Cl. Ex. 1.

<sup>2</sup> P.H. Trans., Cl. Ex. 1.

April 21, 2002. Accordingly, the Board reverses the ALJ's August 1, 2003 Order which finds to the contrary.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Board reverses the August 1, 2003 Order and concludes that claimant suffered accidental injury on April 21, 2002, arising out of and in the course of his employment with respondent. The Board remands this claim to the ALJ for further orders and/or proceedings consistent herewith.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October 2003.

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BOARD MEMBER

c: John L. Carmichael, Attorney for Claimant  
Edward D. Heath, Jr., Attorney for Respondent  
Jon L. Frobish, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> K.S.A. 44-534a(a)(2).